Part IV

Citizens' Europe

9 Citizenship and integration

Contiguity, contagion and evolution

Dora Kostakopoulou

Introduction

When EU citizenship was formally established by the Maastricht Treaty (hereafter Treaty on European Union or TEU), which entered into force on 1 November 1993, both institutional actors and academics were largely unaware of its potential to bring about transformative institutional change. Since the TEU's Citizenship provisions reproduced free movement and residence rights already in place, it was often depicted as a form of market citizenship and as a symbolic gesture that added little new to Community law (Kostakopoulou 2005). But such representations were incorrect. They were historically inaccurate and by bracketing EU citizenship's origins they also foreclosed its future rather arbitrarily.

EU citizenship has evolved considerably over the past 20 years due to the Court's decisive interventions and the Commission's consistent steering of policy reforms. These efforts resulted in both the removal of impediments for mobile EU citizens and in the entrenchment and spread of shared norms. The emergence of EU citizenship as a fundamental status of EU nationals and respect for family reunification are examples of the latter. More importantly, this policy change has occurred without critical junctures or radical changes in the structural environment. Nor can the evolution of EU citizenship be explained by developments carefully planned by national governments in order to maximise their utility and to achieve their desired ends, as the rational choice institutionalist paradigm maintains (Trauner and Ripoll Servent, Chapter 2).

This chapter reviews the process of change in this field. It focuses not only on the establishment of EU citizenship in 1993 and its growth over the last 20 years, but also on the pre-Maastricht legal provisions, policy initiatives, ideas and normative vision which laid paths, opened policy windows and established templates that were later used by EU institutional actors. These templates leaked outside the Community pillar in the mid 1990s and 'infected' the Area of Freedom Security and Justice's (AFSJ) policy towards third-country nationals (TCNs) residing in EU member states. Parallel linkages (Haas 1980; Accarwal 1998) were drawn between the treatment of EU citizens and long-term residents, TCNs, stimulating calls for substantive policy change in the late 1990s and in the new millennium. These links proved to be contingent and short-lived owing

to the security-oriented policy framework and political discourse that followed the 9/11 terrorist attacks and the civic integration agenda constructed by national elites within their domestic publics and uploaded onto the EU's AFSJ framework. But the hegemony of the security framework did not foil pressures for an alignment of intra-EU mobility and extra-EU migration and for more policy-isomorphism between EU citizenship and integration policies. The Lisbon Treaty and the adoption of the Stockholm programme fuelled such pressures and renewed calls for the thus-far failed substantive linkages and for adjacent legal readings. While the economic crisis in the Eurozone may hamper a formal nesting of EU citizenship and integration policies and condemn them to a parallel path for a while, in reality only time differentiates them. In fact, a survey of the intersection of the two institutional structures, policy templates and, unavoidably, time systems reveals that the conditioning nature of EU citizenship and the principle of non-discrimination on grounds of nationality makes the future realisation of a holistic and consistent approach to human mobility appear feasible.

Overview of the degree of policy change in EU citizenship

Substantive dimension: the rationale

Although it is commonly assumed that the birth of EU citizenship coincides with the 'political turn' of the EU in the early 1990s (Rosamond 2000: 98ff.), a careful examination of the history of the European integration project reveals that the European Commission viewed the free movement of workers provisions in the Treaties of Paris and Rome as an incipient form of European citizenship.[1] A number of developments in the 1970s and 1980s gradually actualised the normative vision of a common European citizenship based on rights and equal treatment. These included the adoption of the Declaration on European Identity in 1973,[2] the Tindemans Report,[3] the first direct elections to the European Parliament in 1979,[4] the introduction of a uniform passport in 1981, the prospect of the abolition of internal frontier controls coupled with the Commission's draft directive on residence of Community nationals in the territory of host member states in 1979 and its proposal to grant local electoral rights to Community nationals residing in host member states.[5]

The rationale underpinning the free movement of workers and subsequently EU citizenship has been the advancement of free movement, residence and equal treatment rights in the host member state. However, this rights-based rationale collided with the member states' regulatory autonomy in migration law and policy. For instance, member states opposed the relaxation of the national citizenship requirement for franchise in the 1970s, thereby forcing the Commission to shift its attention from political rights to establishing local consultative councils for migrant workers in the host member states. In the mid 1980s, the Adonnino report[6] called for local electoral rights and voting rights in European Parliament (EP) elections in the member state of residence. Building on the Adonnino Committee's work,[7] the Commission sought to expand the personal scope of free movement beyond active economic actors, a position that led to the

adoption of three Residence Directives (on students, pensioners and self-sufficient European citizens) in 1990.[8] These legal and political initiatives paved the way for the introduction of Union citizenship at Maastricht.

The Maastricht Treaty strengthened the rights-based approach by including local and EP electoral rights in the member state of residence,[9] in addition to the existing free movement and residence rights, diplomatic protection of EU citizens abroad and the pre-existing rights to petition the EP and to apply to the Ombudsman. It also upgraded Union citizenship into a constitutional norm.

The rights-based approach of EU citizenship has been further reinforced in recent years. The Lisbon Treaty tightened the link between equal treatment (the non-discrimination clause in Article 18 TFEU) and Union citizenship. It also strengthened the civic participation dimension of citizenship by incorporating it in Title II Provisions on Democratic Principles of the TEU (in Article 9 TEU) in addition to the provisions found in Article 20 *et seq*. TFEU. The legally binding Charter of Fundamental Rights of the European Union and the adoption of the Stockholm programme in December 2009 – subtitled 'An open and secure Europe serving and protecting citizens' – were also platforms for the development and transformation of EU citizenship. The citizens' initiative has also played an important role; this process – established by Article 11(4) of the TEU – allows a minimum of one million EU citizens from at least one-quarter of the member states to submit an initiative, triggering a legislative initiative on the part of the Commission. This type of direct participatory involvement on the part of Union citizens surely makes Union citizenship more meaningful.

In addition to the citizens' initiative, the Community action programme to promote active European citizenship[10] and the follow-up 'Europe for Citizens' programme,[11] as well as the Fundamental Rights and Citizenship Programme 2007–2013,[12] have sought to promote the active involvement of citizens in the process of European integration[13] (see Table 9.2). The Commission also designated 2013 as the European Year of Citizens.[14] This initiative aims to increase the visibility and accessibility of EU citizens' rights and, in particular, to raise awareness about their free movement and residence rights.

The depth of change

Policy change in this field from 1993 to 2012 has been incremental but transformative. Four main phases can be distinguished in the evolution of EU citizenship since its formal establishment in Maastricht.[15] The first was a minimalist phase (1993–7) during which EU citizenship was mentioned, but was used as an additional ground for confirming existing arrangements; second was a phase of signalling intentions (1998–2001) when the Court used citizenship more constructively as a policy instrument, thereby overriding the interests of the member states; third was a phase of engineering policy change (2002–5), triggered by 'the new legal and political environment'[16] established by the Court's case law and the proclamation of the EU Charter on Fundamental Rights at the Nice European Council; and, finally, transformative policy change took place in the period 2006–12.

During these four phases the following changes can be observed: (1) the gradual disentanglement – but not rupture – of free movement rights from economic conditions, that is, economic activity or self-sufficiency, and the broadening of the notion of community membership in host member states to include weaker or more economically 'vulnerable' EU citizens; (2) the emergence of EU citizenship as a fundamental status of EU nationals and the prominence of the principle of non-discrimination on the grounds of nationality; (3) the adoption of a consistent rights-based approach and the pronouncement of free movement and residence as a right enforceable before national courts; (4) the development of the idea that five years' continued residence in a host member state makes an EU citizen a legitimate 'claimant' of full equality of treatment; (5) an erosion of member state autonomy in a broader range of policy areas and the imposition of limitations on their migration, residence and nationality regulatory powers, resulting from the Court's intention to strengthen citizens' rights and subject member states' decisions to a proportionality test; (6) questioning the traditional distinction between purely internal situations, which fall within the ambit of national law, and situations that have a cross-border element and thus fall within the scope of Community law. This resulted in the activation of EU citizenship in the absence of a cross-border element thereby extending the surface radius of the latter to 'non-mobile' individuals; (7) the gradual strengthening of the civic participatory dimensions of EU citizenship; and, finally, (8) the promotion of citizen empowerment or 'a Europe for citizens'.

The rights-based and EU citizen-oriented approach that began to take root in the new millennium is embodied by the 2004 Directive on the right of citizens and their family members to move and reside freely within the territory of the member states.[17] The Directive remedied the piecemeal approach to free movement that existed before Maastricht. This was accomplished by incorporating and revising the existing Directives and amending Council Regulation 1612/68,[18] codifying the Court's case law and the principle that EU citizens residing in host member states can legitimately expect certain treatment and entitlements. Notable is the establishment, for the first time, of the unconditional right of permanent residence for Union citizens and their families[19] who have resided in a host member state for a continuous period of five years. Shorter periods of residence exceeding three months (residence up to three months is unconditional) demand a right of residence for Union citizens and their family members if: (1) they engage in economic activity; (2) when non-active economic actors have sufficient resources and comprehensive health insurance in the host member state; or (3) they are enrolled at a private or public establishment, have comprehensive health insurance and are self-sufficient in order to avoid becoming a burden on the social assistance system of the host member states. As long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system of the host member states they should not be expelled (Article 14), in line with the Court's ruling in the *Grzelczyk* case, which is discussed below.

Additionally, adopting a more diachronic – rather than substantive – view, the policy focus has subtly shifted from the domain of the material scope of EU

citizenship to its personal scope. In other words, the discussion has shifted from the question of what rights EU citizens enjoy to who should be entitled to exercise these rights, and thus, there has been a move from the realm of 'low politics' to the realm of nationality politics (see case study). It is also noteworthy that the dynamic and experimental character of EU citizenship has been sanctioned by the Treaty. Article 25 TFEU (formerly Article 22 TEC) allows the Council, acting unanimously on a proposal from the Commission and after consulting the EP, to adopt provisions to strengthen or to add to the rights laid down in the TFEU provisions.

The functional dimension: form and type of integration

Concerning the form of integration, 'hard law' has been used in citizenship policy. Regulations and directives were used for the implementation of the free movement provisions of the Treaty of Rome, while directives were used for the implementation of the TEU's provisions on EU citizenship. The 'Citizenship' Directive (Directive 2004/38), discussed above, is a case in point. This instrument includes a modification of existing provisions in line with the case law of the Court, exemplifying the inter-institutional dialogue that takes place at the EU level. Having said this, the Commission's frequent reports mandated by Article 25 TFEU supplement 'hard law'. In these reports, the Commission does not merely outline the status quo, but it also articulates proposals for reform and outlines a vision for the development of EU citizenship. The Commission's role is procedurally sanctioned by the positive integration template that characterises the EU citizenship policy area and is facilitated by the institutional consensus accompanying the Community method, which leaves little discretion to the member states. Accordingly, the Court has played a key role in giving EU citizenship meaning, substance and strength in a number of rulings that the member states have had to implement. On certain occasions this required the amendment of conflicting national legislation, giving rise to criticism and negative reports in national media. However, the shared cognitive map of positive integration meant that, notwithstanding complaints on the part of the member states about the Court's activism, all the participants understood the requirements of the Community method and accepted the rules of that process.

The institutional dynamics of EU decision-making

This section links policy change in EU citizenship to the role of EU institutions. It also shows that the field of EU citizenship affected the field of EU integration in various ways; however, contrary to EU citizenship, where the entrepreneurial role of the Court and the Commission drove (and ensured) the policy's rights-based rationale, the rationale of EU integration policy is still contested. The terrorist attacks of 9/11 contributed to a different perception of how TCNs should be integrated in the EU and led to the member states' endeavours to keep a high degree of regulatory autonomy.

Table 9.1 Overview of policy change in the field of EU citizenship

	Until 1998	*1999–2005*	*Since 2006*
Substantive dimension			
Rationale	Free movement and residence rights vs member states' autonomy in migration law	Rights-enhancing period; EU citizenship as fundamental status independent from economic activity	EU citizenship as fundamental status; citizens empowerment
	Rights-based vs regulatory autonomy	*Shifts towards rights-based*	*Rights-based approach*
Depth	'Free movement of workers'-related rights; introduction of EU citizenship (Maastricht Treaty)	Judicialisation of EU citizenship begins in 1998; residence generates entitlements in the social field	Clarifying and expanding the rights linked to EU citizenship
	Beginnings	*Developing policy core*	*Settling policy core*
Functional dimension			
Form of integration	Focus on directives; important Commission reports mandated under Article 25 TFEU	Directives; case law of increasing relevance; Commission reports	Same as before
	Hard and soft law	*Hard and soft law*	*Hard and soft law*
Type of integration	EU citizenship norm as basis for European polity building	European polity formation	European polity formation
	Positive integration	*Positive integration*	*Positive integration*

The role of EU institutions in citizenship policy

One piece of secondary legislation, Directive 2004/38, and two supranational EU actors, the Commission and the Court of Justice of the EU, have been instrumental to the growth and maturation of EU citizenship during the period 1993–2012. Their interventions and outputs have shown that the added value of EU citizenship should not be sought in the acts of mobility and the border crossings it facilitates, but in the vision of equal treatment and the corresponding obligation of member states to refrain from discriminating against EU nationals on the basis of nationality. This has shaped, and continues to shape, citizens' expectations to be viewed and treated as equals in the member states of the Union. It is precisely this normative template that destabilises the organising principles of national statism: it disrupts societal and political closure by promoting enriched human experiences and bonds of association based on equal treatment. In what follows, I show that there exists a strong correlation between the ethical requirement of non-discrimination on the grounds of nationality (the EU citizenship norm) and the development and growth of EU citizenship.

It is interesting to note that, in the drafting process of the Maastricht provisions on EU citizenship, many of the Commission's proposals were omitted from the final text adopted by the 1991 Intergovernmental Conference. These included the proposal to establish a duty of solidarity on the part of every Union citizen with other Union citizens and with long-term resident TCNs in the EU, as well as the rejection of any form of social marginalisation.[20] The TEU's provisions provided a skeleton of provisions that the Court was eager to build upon. As was already noted, the Court initially adopted a cautious approach (the phase of judicial minimalism), but in 1998 it began to display innovative reasoning (Kostakopoulou 2005). In the *Martinez Sala* case it planted the seeds for a shift from protecting the rights of active economic actors to affirming the equal treatment of all EU citizens irrespective of nationality.[21] Soon afterwards it stated that 'Union citizenship is destined to be a fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality.'[22] This would imply, for instance, that EU national students studying in another member state and facing temporary economic difficulties could rely on the non-discrimination clause to claim social advantages, provided that they did not place an unreasonable burden on the welfare system of the host member state. More frequent judicial interventions in the new millennium enhanced the rights-based rationale of EU citizenship. In *Baumbast*, the Court explicitly recognised that Article 21(1) TFEU (formerly 18(1) TEC) is directly effective, that is, it confers rights that are enforceable before national courts.[23]

Following these formative templates, the Court continued to outlaw discrimination as far as possible, eliciting both resistance and criticism from member states. It ruled out the exercise of national autonomy in the following areas: the grant of entry and residence rights to EU nationals and their family members; residence rights for TCN parents of children with EU citizenship[24] enrolled in educational establishments, irrespective of economic status;[25] granting of welfare assistance to both economically active and non-active citizens integrated to a certain degree into the host

society or its labour market;[26] access to university education;[27] and the payment of war-related pensions and allowances.[28] It made family reunification a general principle of EU law by preventing Mrs Carpenter's deportation from the United Kingdom on the grounds that it would impede her husband's right to provide and receive services in other member states, and by outlawing Belgium's restrictive migration practices with respect to TCN spouses of EU citizens.[29] In subsequent cases, such as *Jia* and *Mettock*, national legislation requiring prior lawful residence in a member state for right of residence of family members was outlawed, drawing fierce criticism particularly in Denmark, the United Kingdom and the Netherlands.[30]

All these cases sparked a lot of criticism from member states of the quasi-legislative role played by the Court and its relation to member state autonomy. However, not only did rights-enhancing case law of the Court make EU citizenship more meaningful, but it also improved individuals' opportunities. The first decade of the new millennium was characterised by a slow yet steady realisation that EU citizenship as a fundamental status (the EU citizenship norm) embodies a value in and of itself that impacts on institutional actors' conduct.

The Court also continued to strengthen EU citizenship in post-Lisbon Europe. The EU citizenship provisions protect Europeans from discrimination – be it direct or indirect – in the exercise of their free movement rights as well as from non-discriminatory restrictions that hinder the former by posing 'unjustified burdens'[31] and 'serious inconveniences'.[32] They also subject denationalisation (and naturalisation) decisions taken by member states to judicial review[33] and protect EU citizen children and their parents from expulsion from member states as well as the Union as a whole – an issue that has also featured in high-profile cases in New Zealand[34] and the UK[35] – since such national measures would '[deprive] EU citizens of the substance of the rights attached to EU citizenship'.[36]

The ongoing discussion shows that the Court and the Commission have adopted a principled and pragmatic approach to citizenship and integration. Instead of according priority to cultural assimilation and to oaths of allegiance, they have endeavoured to create associative relations and partnerships and to promote equal treatment irrespective of nationality. Such an approach implicitly affirms diversity and recognises that whether newcomers develop feelings of belonging and a sense of identification with the host society depends equally on the institutions and membership practices of the new country as on how they are treated by the host country. Parity of treatment is viewed by both the Court and the Commission as the crucial means of creating social fellowship and actualising EU citizenship. In addition, both EU institutions have masterminded and steered processes of concept-formation, meaning-creation and norm-extension in the EU citizenship/free movement of workers policy field.

EU citizenship policy: a case study on judicial decision-making and discursive entrepreneurship

Building upon the previous section on institutional dynamics, this case study examines in more detail the mechanisms the European Commission and the

Court have employed to change EU citizenship law and policy. The case law of the court, reflected in subsequent legislative proposals by the Commission, has altered the substantive norms underpinning EU cooperation on citizenship. A key mechanism of change has been the discursive entrepreneurship of the European Commission. This reinforced the process of 'judicial policy-making'. In this section the discussion focuses on two important 'moments' in this development; namely, the deportation of non-nationals and the power to define 'nationality'. In both areas, member states have been keen to maintain their vestiges of sovereignty, but, at the same time they have had to accept important limitations under pressure from the emerging EU citizenship norm.

Concerning the deportation of EU nationals, the member states' ability to derogate from the free movement provisions of the treaty on grounds of public health, public policy and public security has been authorised by the EC Treaty (formerly Article 39(3) EC). But these permitted grounds must be strictly interpreted and authorities' decisions must comply with the principle of proportionality.[37] A directive adopted in 1964, Directive 62/221, limited the member states' discretion by stating that the above-mentioned grounds cannot be invoked by a member state in order to serve economic ends (Article 2(2) of Directive 64/221).[38] Instead, they have to be based exclusively on the personal conduct of the individual concerned and may never be imposed automatically. The Court proceeded to add flesh to the provisions of Directive 64/224 by establishing that the member states must verify that a Union citizen's personal conduct poses 'a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society'.[39] The Court's preference for a rights-based approach in interpreting the Treaty's derogations from the free movement provisions has protected individuals and has circumscribed national authorities' discretionary powers by requiring that policy or security risks are clearly personified before any action is taken by national authorities. In this way, it has shielded Union citizens and their families from utilitarian calculations and arbitrary state practices. Accordingly, a member state cannot order the expulsion of a Union citizen as a deterrent or a general preventive action,[40] nor can exclusion or expulsion decisions be justified on the basis of governmental policy agendas, for example, such as tackling pornography or organised crime. Previous criminal convictions cannot constitute sole grounds for imposing limitations on cross-border movement.[41] True, there is no isomorphomism in the definition of public policy across the EU; public policy and public security remain 'national concepts', that is, they are defined on the basis of national laws and traditions. However, the Court has clearly stated for more than three decades that the member states' discretion in this area is circumscribed by Community law.[42] It has also sought to diminish the risk of 'scapegoating of foreigners' in order to satisfy public opinion.

All this case law found its way into both the Commission's proposed and adopted text of the Citizenship Directive 2004/38, which repealed the 1964 Directive. In Article 27(2) there are references to proportionality, that the personal conduct of an individual must constitute a genuine, present and sufficiently

serious threat, and that 'justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted'. Article 28(1) also incorporates the Court's case law as well as rulings from the ECtHR by stating that

> before taking an expulsion decision on grounds of public policy or public security, the host MS shall take into account considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member state, and the extent of his/her links with the country of origin.

The Citizenship Directive (2004/38) has also enhanced the security of residence of Union citizens. It stipulates that permanent residents can be ordered to leave only on 'serious grounds of public policy or public security' (Article 28(2)), and residents that have been permanent Union citizens for the previous ten years and minors may not be ordered to leave the territory of a member state, except on imperative grounds of public security (Article 28(3)). In addition, Article 33 of Directive 2004/38 states that a member state cannot expel an individual as a penalty or legal consequence of a custodial penalty unless the requirements pertaining to restrictions on entry and residence apply (Articles 27–29) and, if it occurs, should be subject to assessment after two years (Article 33). This change was based on the Court's decision in *Calfa* that automatic expulsion for life following a criminal conviction without consideration of the personal conduct of the offender or the danger (s)he represents contravened treaty provisions (Article 49 EC) and Directive 64//221.[43] To sum up, the Court's rulings found their way into secondary legislation and from there into the member states' legislative and policy-making frameworks. As such, they provided – and continue to provide – impetus for vertical normative socialisation and policy-learning. This is one side of the double movement of initiating institutional change.

The second side case relates to the member states' presumed 'absolute' competence in nationality matters. As the determination of nationality falls within the member state-reserved domain of jurisdiction, both the Court and the Commission initially refrained from intervening in this policy area. Union citizens are those who possess or acquire the nationality of the member states (Article 8(1) EC of the Maastricht Treaty), and the Declaration on Nationality of a member state, annexed to the Final Act of the TEU, expressly states that the national laws of the member states would define who would be considered to be a national of a member state. Accordingly, the case law concerning the personal scope of Union citizenship remained relatively underdeveloped and modest for nearly two decades. It is only recently, in *Rottmann*,[44] that clarification emerged on the *Michelletti* ruling that the member states' competence in the determination of nationality, which is the basis for the possession or acquisition of EU citizenship, should be exercised with due regard to Community law.[45]

More specifically, in *Michelletti*, the Court confirmed that determination of nationality falls within the exclusive competence of the member states, but it went on to add that this competence must be exercised with due regard to the requirements of Community law.[46]

In Rottmann, the Court went further by stating that

> the Member States have the power to lay down the conditions for the acquisition and loss of nationality, but … in respect of citizens of the Union, the exercise of that power, in so far as it affects the rights conferred and protected by the legal order of the Union, as is in particular the case of a decision withdrawing naturalization such as that at issue in the main proceedings, is amenable to judicial review carried out in the light of European Union law.[47]

In other words, the assumption that member states enjoy absolute autonomy in the field of determination of nationality is no longer correct. They enjoy only 'relative autonomy' in determining conditions for the acquisition and loss of nationality, since their decisions are subject to judicial review and the proportionality test. In other words, in *Rottmann* the Court weakened the link between EU citizenship and member state nationality by displaying 'avant-gardism in nationality matters'.[48]

Contiguity, continuity and spillover effects across pillars

The implementation of the free movement and residence provisions in the treaty and the emergence and growth of EU citizenship led to the gradual opening of the membership circle of the member states; foreigners first became EU nationals and then EU citizens. This did not affect non-national residents in the EU (TCNs) who had no connections with EC law, i.e. TCNs who did not have family links with Community nationals, were employees of Community-based companies providing cross-border services or were beneficiaries of three-generation agreements signed between the Community and third countries (Evans 1994; Guild 1999; Staples 1999). Member states were free to regulate non-EU migrants' residence and employment, and national migration laws were often used to impose hierarchical statuses and unequal treatment. As this competence fell within the regulatory realm of the member states, they met any Commission proposal aiming to improve the working conditions and living standards of non-EU migrants with resistance.[49]

Following the entry into force of the Single European Act, however, the distinction between Community workers and 'extra-Communitarian' workers was called into question. The EP took a leading role by calling for the extension of free movement rights to all workers irrespective of nationality and policy isomorphomism in family reunification rights.[50] By proposing this and further rights – such as electoral rights for non-EC migrants[51] – the EP drew a substantive link

between intra-EU mobility and extra-EU migration, triggering a change in the established conceptual and institutional framework.

The partial communitarisation of the third pillar in Amsterdam in 1997 advanced the possibility of extending EC law's non-discrimination template to TCNs by bringing matters relating to TCNs within the Community's (mixed) competence. The rights-based approach adopted by Community law with respect to EU nationals began to trickle down, and the principle of equal treatment generated demands for consistency in the treatment of all 'foreign' workers, irrespective of their nationality and their legal residency status. Internal mobility and migration were thus more closely aligned (Haas 1980; Accarwal 1998).

At the Tampere special summit in October 1999, the heads of state and government noted the need to grant long-term resident TCNs in the EU rights and obligations comparable to those of Union citizens.[52] Following Tampere, the climate was conducive to a more comprehensive approach towards migration. The Commission capitalised on this by advocating the grant of 'civic citizenship', which would entail free movement rights to long-term resident TCNs.[53] Building upon a number of initiatives,[54] the Commission proposed two Directives on family reunification (1999) and on the status of long-term resident TCNs (2001). The former Directive[55] was based on Article 63(3)(a) EC and sought to harmonise national legislation in this area. It did so by granting family reunification rights to all TCNs – including refugees under the Geneva Convention of 1951 and persons enjoying temporary protection – that reside lawfully in a member state and hold a residence permit for at least a year, regardless of the purpose of their residence. It also covered Union citizens who had not exercised their right to free movement, whose situation had hitherto been subject solely to national rules. The draft Directive on the status of TCNs who are long-term residents was based on Articles 63(3)(a) and 63(4) EC and was designed to harmonise national laws governing the conditions for the acquisition and the scope of long-term resident status, and to grant long-term resident TCNs the right of residence in other member states.[56]

In both Directives we discern a dynamic of EU law magnetism; emphasis is put on non-discrimination and the reflexive application – and in certain respects the modification – of the template applying to EU nationals. For example, in the Commission's draft family reunification Directive the definition of family members included spouses and co-habitating partners of the same sex. It also granted an autonomous right of residence to members of the nuclear family after four years' residence or earlier in certain cases of separation, divorce or death. Similarly, the long-term residents draft Directive stated that long-term resident TCNs would enjoy enhanced protection against expulsion and equal treatment with respect to access to employment and self-employment, conditions of employment and working conditions, education and vocational training – including study grants – recognition of qualifications, social security and health care, social assistance, social and tax advantages, access to goods and services, including public and private sector housing, and of freedom association and union membership.

The partial communitarisation of the JHA pillar of the TEU therefore resulted in the transfer of the normative template of the free movement provisions and equalisation to previously excluded groups of people. The Commission assumed its political entrepreneurship role and pushed for a migration policy frame that reflected the intra-EU movement policy choices and the equal treatment logic. However, as the subsequent discussion will show, unpredictable external events – international terrorism – played a decisive role in changing the policy climate and gave the opportunity to certain member states to assume strict positions and to induce policy changes at the EU level mirroring their own perspectives and plans for the future.

Breaking institutional contiguity and issue-linkage: integration requirements

The Commission's proposals concerning family reunification and long-term resident status were not very positively received by certain member states, such as the Netherlands, Germany and Austria. The 9/11 terrorist attacks changed the political climate and this impacted the negotiations in the Council. Designing policies of migrant reception, the provision of equal opportunities and equitable working conditions, and the depiction of migration as a source of revitalisation of societies and economies were replaced by suspicion towards newcomers and fears that migrants might not integrate and may pose a threat to national unity and social cohesion. Although in the case of the Netherlands and the UK[57] an official retreat from multiculturalism preceded 9/11, the attacks nevertheless facilitated the framing of ethno-cultural and religious diversity as a threat to social cohesion and national values. Accordingly, emphasis was put on promoting national identities, producing official lists of national values, establishing compulsory language courses and tests for migrants and instituting naturalisation ceremonies and oaths of loyalty. Migrants had to 'earn' their residence and citizenship rights and 'prove' that they wholeheartedly embraced their new country's history, values and the national way of life (Kostakopoulou 2009). Accordingly, national conceptions of integration sought to displace the previous liberal paradigm on equal treatment and more secure rights for long-term resident TCNs, which the Commission has championed since Amsterdam.

Member states sought to dilute the Commission's proposals concerning family reunification and long-term residence and to make them fit with their own migration rules. Despite the Commission's opposition, provisions on integration conditions and measures were added to both Directives.[58] In the family reunification Directive, children over 12 years old arriving in a member state unaccompanied by family must meet an integration 'condition' provided for under domestic legislation (Article 4(1)). Also, TCNs' rights to family reunification are conditional upon compliance with 'integration measures', which may be required for ordinary migrants before they have been granted family reunification (i.e. probably in the country of origin) (Article 7(2)). Similarly, the long-term

residents Directive included provisions on 'integration conditions' as prerequisites for the award of long-term resident status and residence in other member states.

The integration discourse circulating in national arenas surfaced at the EU level. In 2002 the JHA Council called for coordinated action and more policy coherence at the national and European levels and proposed the establishment of National Contact Points on Integration, a network of experts designed to promote the exchange of information and best practice in this area and monitor progress.[59] The 2003 European Council meeting in Thessaloniki stressed the need to develop a coherent framework for migrant integration policy, based on a set of common basic principles, and invited the Commission to present annual reports on migration and integration.[60]

The Commission continued its liberal-multiculturalist approach as attested by its Communication on Immigration, Integration and Employment,[61] but the 2004 Hague Programme[62] laid down the basis for an EU Framework on Integration that was more closely aligned with more restrictive national priorities and policy frames, and less with the EU rights-based framework on free movement. It emphasised the need for greater coordination in national integration policies and EU initiatives and called for the development of a clear framework on integration, based on a set of common principles (CBPs) adopted by the JHA Council on 19 November 2004.[63] Although the principles referred to the dynamic process of integration and 'the two-way process of mutual accommodation by all immigrants and residents of MSs' (CBP 1), they nevertheless reflected national priorities and conceptions by placing the emphasis on migrants' responsibilities to respect the basic values of the EU (CBP 2), learn the language, history and institutions of the host society (CBP 4.1), be active societal participants (CBP 5) and on the possibility of conflict of cultural and religious practices with European rights or national law (CBP 8.2). There was no reference to facilitating naturalisation and the promotion of intercultural dialogue.

In its subsequent Communications, the Commission began to incorporate the new logic of mandatory integration (Carrera 2008). The Communication on a Common Agenda for an Integration Framework for the Integration of TCNs in the EU (2005),[64] for example, referred to the strengthening of 'the integration component of admissions procedures, through pre-departure measures, such as information packages and language and civic orientation courses in the countries of origin' with a view to promote the implementation of CB4. The Communication on a Common Immigration Policy in Europe: Principles, Actions and Tools[65] embraced the idea of mandatory testing since integration is 'the key to successful immigration'.[66]

The European Pact on Immigration and Asylum submitted by the French presidency in the autumn of 2008 mirrored national trends, lending legitimacy to the unidirectional conception of integration featured in national arenas. The Pact sought to legitimise the national retreat from multiculturalism and pluralism and the alignment of integration policy with migration control: 'legal immigration policy must be selective and concerted'; 'family immigration must be more

effectively organised … must be in accordance with the acceptance capabilities of the Member State and the integration capabilities of migrants'.[67] In addition, reflecting the morphing of integration policy into a device for the validation of national cultures and identities, it stated that TCNs would have to respect the identities of the member states and the EU.

Citizenship and integration: competing rationales

The EU institutions involved in policy-making in the two policy areas examined in this chapter – EU citizenship and integration policies – had divergent, and often colliding, interpretative frameworks about community membership, the role of migration and the importance of multiculturalism. The temptation was often great to dramatise the consequences of ethno-cultural diversity in a changing political landscape where narratives of fear and suspicion were predominant. Yet, the restrictive and security-based rationale that underpinned the integration policy of non-EU migrants was undermined by the institutional innovations brought by the Lisbon Treaty.

Among them, it is worth mentioning that the Commission's exclusive right of initiative with respect to labour migration policy was accompanied by the increasing powers of the CJEU to review and interpret EU migration law, and by the involvement of national parliaments in the evaluation of the implementation of EU policies in this area (Article 70 TFEU). The fully binding EU Charter of Fundamental Rights also triggered a human rights protection dynamic across the EU. In addition, the new provision dealing expressly with labour migration policy, namely Article 79 TFEU, explicitly referred to the 'fair treatment of third country nationals residing legally in the Member States' (Article 79(1) TFEU). It also contains an explicit legal base for the EU supporting action in the field of integration of long-term resident TCNs (Article 79(4) TFEU). At the same time, however, the member states have preserved their competence to 'determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed' (Article 79(5) TFEU).

Building on the Lisbon Treaty's institutional innovations, the Stockholm Programme, which laid down a policy agenda for the 2010–14 period, was much more citizen-oriented.[68] The restrictive and security-based focus of the discourse and surrounding policy of its predecessor – the Hague Programme – was diluted owing to rights-enhancing policy priorities, such as the safeguard of individual rights and the rule of law, protecting vulnerable EU citizens and enhancing data protection. The promotion of a 'Europe of Rights' was viewed as necessary in order to advance a 'Protective European Union'.[69] It also resurrected the Tampere mandate of granting TCNs residing legally in the EU rights and obligations comparable to those of EU citizens.[70] The implementation of this objective would require the consolidation and amendment of the four directives on legal migration and the 'evaluation and, where necessary, review of the directive on family reunification, taking into account the importance of integration measures'.[71] One thus discerns a shift away from the 'common basic principles'

and mandatory regimes of civic integration towards an interest in monitoring the impact of integration policies on various societal domains, such as education, employment and social inclusion.

This discursive shift necessitating policy readjustments was also evident in the Commission's Action Plan, which was published in April 2010.[72] In a clear attempt to reverse the downgrading of individual rights owing to the predominance of security concerns, it stated that 'the Union must resist tendencies to treat security, justice and fundamental rights in isolation from one another. They go hand in hand in a coherent approach to meet the challenges of today and the years to come'.[73] The Commission also noted the positive role of migration in addressing the Union's demographic challenge and its potential to contribute to the Europe 2020 strategy by providing an 'additional source of dynamic growth',[74] and reiterated this in its 2011 Communication on Migration.[75] Interestingly, although member states are moving towards the adoption of more restrictive migration agendas in a recession-ridden Europe, the Commission continues to defend the advantages of mobility. This attests to the continuous interplay of dynamics of closure and openness in political life, and shows that the shifting nexus of security and power – on the one hand – and rights and citizenship values[76] – on the other – remain under

Table 9.2 Explaining policy change in EU citizenship

Factors altering actors' opportunity structure	
Formal changes to the structural context	Commission's right of initiative and ECJ's jurisdiction over migration law after 2009
Informal changes to the structural context	Member states' discretion curtailed by primacy of Community law established by ECJ
Altered exogenous preferences	Shift after 9 September 2001 of national conceptions of integration to more restriction and 'earned' rights
Factors altering actors' beliefs and norms	
Reframing of policy debates and policy solutions	'Judicial policy-making' (impact of case law on the definition of citizenship and integration)
	Enhanced rights-based approach in new treaty competences and Charter of Fundamental Rights after 2009
Mechanisms leading to policy change	
Redefinition of beliefs and norms	Discursive entrepreneurship (Commission's use of ECJ case law to redefine content of 'citizenship'; EP and Commission's substantive link between intra-EU mobility and extra-EU migration)
	Policy-learning (legislators incorporate new definitions provided by case law in subsequent policy negotiations)

negotiation. After all, one cannot sidestep the pressure for more congruence between intra-EU mobility and extra-EU migration and the application of a rights-based approach to migrant integration.

Conclusion

Policy change in the field of EU citizenship has been radical and transformative. Both the European Commission and the Court have steered EU citizenship away from market integration onto a normative and rights-based path that advanced citizens' rights and, in the process, has encroached upon member state autonomy. The judicialisation of EU citizenship transformed it from a simple 'add-on' to the status of national citizenship into a 'fundamental status' and has upgraded the legal requirement of equal treatment, irrespective of member state nationality, into a burgeoning moral code. Structural openings, such as the adoption of Directive 2004/38 and treaty amendments at Amsterdam, Nice and Lisbon, coupled with the EU Charter of Fundamental Rights and the Stockholm Programme, have enabled the evolution of EU citizenship and laid the foundations for innovative interpretations. In this respect – far from being a single and unified institutional reality – EU citizenship has been a complex, multi-layered script: it is a composite of many layers, each layer building on, echoing and extending the previous one.

This evolving rights-based dynamic has also influenced the AFSJ's migration paradigm. The contiguity between EU law and intergovernmental cooperation in JHA that ended in Amsterdam resulted in an appreciation of the need for greater isomorphism between EU mobility policy and law, and non-EU migration law and policy. The emergence of a restrictive discourse and policy on integration in the new millennium has undermined this momentum and revealed the existence of countervailing tendencies and disarray. However, the ongoing discussion has showed that both the Commission and the Court are keen to maintain the adjacent readings on the free movement of persons and EU citizenship, on the one hand, and non-EU migration on the other.

Although the alignment between the two has not yet been achieved, a forward movement towards the consolidation of a rights-based approach to mobility, integration, citizenship and migration can be discerned. However, the fluctuating political dynamics and possibilities for backsliding and incompatible movements in all directions should not be forgotten. The extent to which EU institutions will continue to push for more parallelism and a unified framework in EU policy on citizenship, on the one hand, and on migration and integration, on the other, in a recession-ridden EU remains to be seen. But in any case, what the institutional evolution of the AFSJ has made clear is that the current state of affairs cannot possibly be kept separate – like Chinese boxes – from Community law and thus remain distinct for a long period of time. Instead, they co-exist, co-evolve and influence each other. This is perhaps how policy change takes place: like the orthodox churches that were erected on the sites of ancient Greek temples, policy change more often than not depends on context-transcending moves and transitions rather than on fissures. Transitions are always marked by politics, the exercise of leadership as well as by bargaining.

Appendix

Table 9.A1 Initiatives of EU institutions in citizenship policy in the period 1997–2011

Initiatives since the Treaty of Amsterdam (1997)	*European Commission*	*European Parliament*	*Council*	*Court of Justice of the EU*
1997	Action Plan for Free Movement of Workers (COM(97/0586/final) Second report on EU citizenship (COM(97)230 final) Report on EP Directive on Voting Rights (COM(97) 731 final)		Single Market Action Plan (SEC(97) 1 final)	
1998				*Martinez Sala*; *Bickel and Frantz*
2000	Communication on EP Elections Directive (COM(2000) 843 final	Imbeni Report to the EP (A5-0191/2000, OJ C 135, 5 September 2000, p. 59)		*Elsen*
2001	Third Report on EU Citizenship (COM(2001) 506 final)			*Grzelczyk*: EU citizenship as a fundamental status
2002			Council Decision 2002/772 amending the Act concerning election of the EP representatives of the EP by direct universal suffrage (OJ L 283, 21 October 2002)	*Baumbast*: the direct effect of Article 18(1) EC; *Carpenter*; *MRAX*

2003	Report on Derogation on EP Voting Rights (COM(2003) 31 final) Communication on EP Voting in an Enlarged Union (COM(2003) 174 final)		
2004	Fourth Report on EU Citizenship (COM(2004) 695 final; Decision 2004/100/EC of the Council of 26 January 2004 Establishing a Community Action Programme to Promote Active European Citizenship	Dir. 2004/38 (OJ L 158, 30 April 2004)	*Trojani*; *Collins*; *Zhu and Chen*
2005	Report on Derogations to the Right to Vote and Stand in Municipal Elections (COM(2005) 382 final); Proposal for a Decision of the European Parliament and of the Council Establishing for the Period 2007–2013 the Programme 'Citizens for Europe' to Promote Active European Citizenship; COM(2005) 116 final		*Bidar*; *Ioannidis*

continued

Table 9.A1 Contnued

Initiatives since the Treaty of Amsterdam (1997)	*European Commission*	*European Parliament*	*Council*	*Court of Justice of the EU*
2006	Report on the Participation of European Union Citizens in the MS of Residence (COM(2006)790) Proposal for Amendments to the Directive on Municipal Voting			*Spain* v. *UK*; *Eman and Sevinger*; *Tas Hagen*
2007	Report on Effective Consular Protection (COM(2007) 767 final); Report on Derogations from the Right to Vote in EP (COM(2007) 846)		Establishment of Fundamental Rights and Citizenship Programme 2007–13; Council Decision 2007/252/EC OJ L110, 27 April 2007	*Jia*
2008	Fifth Report on EU Citizenship (COM(2008) 85			*Metock*
2009	Communication on the Better Transposition of the Citizenship Directive (COM(2009)313; Communication on an Area of Freedom, Security and Justice Serving the Citizen (COM(2009) 262 final			*Ibrahim*; *Texeira*; *Vatsouras and Koupatanze*

2010	Sixth Report on EU Citizenship (COM(2010) 602); Commission Report on Progress Towards Effective EU Citizenship (COM(2010) 603); Report on 2009 EP Elections (COM(2010) 605	*Rottmann*	
2011		*Zambrano;* but also see *McCarthy* and *Dereci*	

Notes

1 The Free Movement of Workers in the Countries of the European Economic Community, Bull. EC 6/61, pp. 5–10, 6.
2 Annex 2 to chapter II, 7th General Report EC, 1973.
3 European Union, Report to the European Council, Supplement 1/76, Bull. EC 1976.
4 OJ EC, 278, 8/10/77, 1–11.
5 Bull. EC. 10–1972.
6 Pietro Adonnino chaired the ad hoc Committee for a People's Europe in line with the mandate given to it by the Fontainebleau Council in 1984.
7 See its second report in June 1985: Bull. EC. Supplement 7, 1985, pp. 9–14.
8 Directives 90/364, 90/365 and 90/366, which was replaced by Directive 93/96. The European Parliament and Council Directive of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states (2004/38/EC), which repeals the above mentioned Directives, introduces three separate categories of residence rights and establishes an unqualified right of permanent residence after five years of continuous legal residence in the host member state; OJ 2004 L 158/77 (30 April 2004).
9 Two directives implemented the provision on electoral rights; namely Council Directive 94/80 [1994] OJ L368 and Council Directive 93/109 [1993] OJ L329/34.
10 Council Decision 2004/100/EC of 26 January 2004 establishing a Community action programme to promote active European citizenship; OJ L30, 4/2/2004.
11 Proposal for a Decision of the European Parliament and of the Council Establishing for the Period 2007–2013 the Programme 'Citizens for Europe' to Promote Active European Citizenship; COM(2005) 116 final.
12 Council Decision 2007/252/EC OJ L110, 27.4.2007, p. 33, corrigendum OJ L141 of 2.6.2007, p. 83.
13 The main aims of the 'Citizens for Europe' programme are to enhance interaction among European citizens and civic participation.
14 See the official website: http://europa.eu/citizens-2013/en/home.
15 The chronology is adapted from Kostakopoulou (2005).
16 This term is used by the European Commission in para. 1.3 of the explanatory memorandum of its proposal for a Directive on the right of citizens and their family members to move and to reside freely within the territory of a member state; COM(2001) 257 final, Brussels, 23 May 2001.
17 Directive 2004/38/EC, OJ 2004 L 158/77.
18 Articles 10 and 11 of Council Reg. 1612/68 were repealed with effect from 30 April 2006.
19 The definition of a 'family member' includes a registered partner if the legislation of the host member state treats registered partnership as equivalent to marriage.
20 See Commission, Initial contribution by the Commission to the Intergovernmental Conference on Political Union, Composite Working Paper of 15 May, SEC(91) 500; Union Citizenship, Suppl. 2/11, Bull. EC and Commission Opinion of 21 October 1990, COM(90)600.
21 Case C-85/96 *Maria Martinez Sala* v. *Freistaat Bayern* [1998] ECR I-2691.
22 Case C-184/99 *Grzelczyk* v. *Centre Public d'Aide Sociale d'Ottignes-Louvain-la-Neuve* [2001] ECR I-6913, at para. 31.
23 Case C-413/99 *Baumbast and R* v. *Secretary of State for the Home Department* [2002] ECR I-7091.
24 Ibid.; Case C-200/02 Zhu and Chen [2004] ECR I-9925; Case C-34/09 *Zambrano*, Judgment of the Court of 8 March 2011.
25 See Case C-310/108 *London Borrow of Harrow* v. *Nimco Hassan Ibrahim and Secretary of State for the Home Department*, Opinion of AG Mazak delivered on 20 October 2009, Case C-480/08 *Maria Teixeira* v. *London Borough of Lambeth and*

Secretary of State for the Home Department, Opinion of Advocate General Kokott delivered on 20 October 2009.

26 See, inter alia, Case C-184/99 *Grzelczyk* v. *Centre Public d'Aide Sociale d'Ottignies-Louvain-la-Neuve* [2001] ECR I-6193; Case C-209/03, *Bidar* v. *London Borough of Ealing*, Judgment of 15 March 2005; C-138/02 *Brian Francis Collins* [2004] ECR I-2703; Joined Cases C-22/08 and C-23/08 *Athanasios Vatsouras* v. *Arbeitsgemeinshcaft (ARGE) Nurnberg 900 and Josif Koupatantze* v. *Alrbeitsgemeinschaft (ARGE) Nurnberg 900*, Judgment of the Court of 4 June 2009.

27 Case C-147/03 *Commission* v. *Austria* [2005] ECR I-5969; Case C-73/08 *Bressol and Others and Chavenot and Others* [2010] ECR I-2735.

28 Case C-499/06 *Halina Nerkowska* v. *Zaklad Ubezpieczen Spolecznych*, Judgment of the Court of 22 May 2008; Case C-212/06 *Krystyna Zablocka-Weyhermuller* v. *Land Baden-Wurttembrg*, Judgment of the Court of 4 December 2008.

29 Case C-60/00 *M. Carpenter*, Judgment of the Court of 11 July 2002; Case C-459/99 *MRAX* [2002] ECr I-6591.

30 C-1/05 *Jia* v. *Migrationsverket* [2007] ECR I-1; Case C-127/08 *Metock* [2008] ECR I-6241.

31 See, inter alia, Case C-192/05 *K. Tas-Hagen, R. A. Tas* v. *Raadskamer WUBO van de Pensioen – en Uitkeringsraad*, Judgment of the Court of 26 October 2006; Joined Cases C-11/06 and C-12/06 *Rhiannon Morgan* v. *Bezirksregierung Köln* and *Iris Bucher* v. *Landrat des Kreises Düren*, Judgment of the Court of 23 October 2007; Case C-76/05 Schwarzand Gootjes-Schwarz, Judgment of the Court of September 2007.

32 See Case C-391/00 *Runevic-Vardyn*, Judgment of the Court of 12 May 2011.

33 Case C-135/*08 Rottmann* [2010] ECR I-0000.

34 *Ding and Ye* [2009] NZSC 76.

35 *ZH (Tanzania)* [2011] UKSC 4.

36 Case C-34/09 *Zambrano*, Judgment of the Court of 8 March 2011, para. 42. The 'substance of rights test' was reiterated, and distinguished, in *McCarthy* and *Dereci and Others*; Case C-434/09, Judgment of the Court of 5 May 2011 and Case C-256/11, Judgment of the Court of 15 December 2011.

37 Case C-100/01 *Ministre de l'Interieur v Aitor Oteiza Olazabal*, Judgment of the Court of 26 November 2002; Joined Cases C-482/01 and C-493/01 *Orfanopoulos and Oliveri* v. *Land Baden-Wurttemberg* [2004] ECR I-5257.

38 (1964) OJ Special Edition 850/64, 117.

39 Case 30/77 *R* v. *Bouchereau* [1977] ECR 1999.

40 Case 67/74 *Bonsignore* [1975] ECR 297, para. 6, and Case 36/75 *Rutili* [1975] ECR 1219, para. 29.

41 Article 27(2) of Dir. 2004/38; Case C-348/96 *Calfa* [1999] ECR I-11, para. 22 to 24.

42 Case 41/74 *van Duyn* [1974] ECR 1337.

43 Case C-348/96 *Calfa* [1999] ECR I-11.

44 Case C-135/08 *Rottmanm* v. *Freistaat Bayern*, Judgment of the Court of 2 March 2010.

45 Case C-369/90 *Micheletti and Others* v. *Delegacion del Gobierno en Catanbria* [1992] ECR I- 4329.

46 Ibid.

47 *Rottmann*, at para. 48.

48 The term is borrowed from de Groot and Anja Seling (2011).

49 See, for example, European Commission (1985), *Guidelines for a Community Migration Policy* COM(85) 48 final. For a critique, see Kostakopoulou (2002).

50 European Parliament (1989) Resolution on the Declaration of Fundamental Rights and Freedoms, A2-0003/89; (1989) Resolution on the Joint Declaration Against Racism and Xenophobia and an Action Programme by the Council of Ministers, A2-261/88; (1990) Resolution on Freedom of Movement for Non-EEC Nationals, A3-175/90, OJ C175, 16 July 1990.

51 European Parliament (1991) Resolution on the Free movement of Persons A3-0199/91, OJ C 159/12-15, 17 June 1991.
52 Tampere Presidency Conclusions, European Council 15–16 October 1999, SN 200/99 Brussels.
53 COM(2000) 757 final, 22 November 2000, pp. 19–20.
54 See, among others, European Commission (1997) Proposal for a Decision on Establishing a Convention on Rules for the Admission of Third Country Nationals to the Member States of the European Union COM(97) 387, 30 July 1997.
55 COM(1999) 638 final CNS 1999/0258, Amended Commission Proposal COM(2000) 624 final.
56 European Commission, Proposal for a Council Directive Concerning the Status of Third-Country Nationals who are Long-term Residents, COM(2001) 127 final, Brussels 13 March 2001.
57 See the 1998 Newcomer Integration Act in the Netherlands and the Nationality, Immigration and Asylum Act 2002 in the UK.
58 See Articles 4 and 7 of Council Directive 2003/86 (OJ L 251/12, 3 October 2003) and Articles 5 and 15 of Council Directive 2003/109 (OJ L 16/44, 23 January 2004). Compare also Directive 2004/114 on the conditions of admission for TCNs for the purposes of studies, student exchange, unpaid training or voluntary service (OJ L 375, 23 December 2004) and Directive 2005/71 on a specific procedure for admitting TCNs for the purpose of scientific research (OJ L 289/15, 3 November 2005).
59 Council Meeting 2455, Luxembourg, 14–15 October 2002. The NCPs contributed to the compilation of the first edition of the *Handbook on Integration for Policy-Makers and Practitioners*.
60 Thessaloniki European Council, 19–20 June 2003. Presidency Conclusions 11638/03. The first report was published in 2004: COM(2004) 508
61 COM (2003) 336 final, 3 June 2003.
62 On 4 November 2004, the European Council adopted the Hague Programme, which set forth the objectives to be implemented in the area of freedom, security and justice for the period 2005–2010. This was followed by the Commission's Action Plan (May 2005).
63 Justice and Home Affairs Council Meeting 2618, 14615/04 of 19 November 2004.
64 COM (2005) 389 final, Brussels, 1 September 2005.
65 COM (2008) 359 final, SEC (2008) 2026, Sec (2008) 2027, 17 June 2008.
66 Ibid., p. 8.
67 The draft dated 4 July defined integration capabilities on the basis of (1) families' resources and accommodation in the host country and (2) knowledge of that country's language.
68 Council of the European Union, the Stockholm Programme – An Open and Secure Europe Serving and Protecting the Citizens, Brussels, 2 December 2009, 17024/09.
69 See the Commission's Communication on An Area of Freedom, Security and Justice Serving the Citizen: Wider Freedom in a Safer Environment, Brussels, 10 June 2009, COM(2009) 262/4.
70 Council of the EU, The Stockholm Programme, at p. 64.
71 Ibid.
72 Commission Communication on Delivering an Area of Freedom, Security and Justice for Europe's citizens – Action Plan Implementing the Stockholm Programme, COM (2010) 171, Brussels, April 2010.
73 Ibid., p. 4.
74 Ibid., p. 7.
75 COM(2011) 248 final, Brussels, 4 May 2011.
76 For example, the general principles of EU law, such as proportionality, respect for fundamental rights and non-discrimination, will be activated if national restrictive measures threaten to render ineffective the objectives of the family reunification

Directive as the Court stated in *Chakroun*; Case C-578/08 *Rhimou Chakroun* v. *Minister van Buitenlandse Zaken*, Judgment of the Court of 4 March 2010.

References

Accarwal, V. K. (1998) *Institutional Designs for a Complex World*, Ithaca, NT: Cornell University Press.

Carrera, S. (2008) *In Search of the Perfect Citizen? The Intersection between Integration, Immigration and Nationality in the EU*, Nijmegen: Wolf Legal Publishers.

de Groot, R. G. and Seling, A. (2011) 'The Consequences of the Rottmann Judgment on Member State Autonomy: The European Court of Justice's Avant-Gardism in Nationality Matters', *European Constitutional Law Review* 7(1): 150.

Evans, A. (1994) 'Third Country Nationals and the Treaty on European Union', *European Journal of International Law* 5: 199–219.

Guild, E. (ed.) (1999) *The Legal Framework and Social Consequences of Free Movement of Persons in the European Union*, Oxford: Hart.

Haas, E. (1980) 'Why Collaborate? Issue-linkage and International Regimes', *World Politics* 32(3): 1–31.

Kostakopoulou, D. (2002) 'Integrating Non-EU Migrants in the European Union: Ambivalent Legacies and Mutating Paradigms', *Columbia Journal of European Law* 8(2): 1–21.

—— (2005) 'Ideas, Norms and European Citizenship: Explaining Institutional Change', *Modern Law Review* 65(2): 233–267.

—— (2009) 'The Area of Freedom, Security and Justice and the Political Morality of Migration and Integration', in: H. Lindahl (ed.) *A Right to Inclusion and Exclusion? Normative Fault Lines of the EU's Area of Freedom, Security and Justice*, Oxford: Hart, 185–207.

Rosamond, B. (2000) *Theories of European Integration*, Houndmills: Palgrave.

Staples, H. (1999) *The Legal Status of Third Country Nationals Resident in the European Union*, The Hague: Kluwer.